



CITY COUNCIL

AGENDA REQUEST

AGENDA OF:	07-07-15	AGENDA REQUEST NO:	V-C
INITIATED BY:	LANE WOLF SFC PROJECT MANAGER	RESPONSIBLE DEPARTMENT:	ENGINEERING
PRESENTED BY:	CHRISTOPHER STEUBING, PE, CFM, CITY ENGINEER	DIRECTOR:	CHRISTOPHER STEUBING, PE, CFM, CITY ENGINEER <i>CLS</i>
		ADDITIONAL DIRECTOR (S):	JENNIFER MAY, <i>jm</i> DIRECTOR OF ECONOMIC DEVELOPMENT
SUBJECT / PROCEEDING:	SMART FINANCIAL CENTRE AT SUGAR LAND OWNER DIRECT PURCHASE CONTRACTS / AUTHORIZE A CONSTRUCTION CONTRACT WITH IRWIN SEATING COMPANY TO PROVIDE FULL DESIGN AND INSTALLATION SERVICES FOR PACKAGE 1, FIXED SEATING IN THE AMOUNT OF \$1,198,705.00		
EXHIBITS:	SIGNED CONTRACT IRWIN SEATING COMPANY BID PROPOSAL		
CLEARANCES		APPROVAL	
LEGAL:	EUGENIA A. CANO, FIRST ASST. CITY ATTORNEY <i>EA</i>	ASSISTANT CITY MANAGER:	JIM CALLAWAY <i>JC</i>
PURCHASING:	TODD REED, CPPO PURCHASING MANAGER <i>P</i>	ASSISTANT CITY MANAGER:	N/A
BUDGET:	JENNIFER BROWN, <i>JB</i> DIRECTOR OF FINANCE	CITY MANAGER:	ALLEN BOGARD <i>Allen Bogard</i>
BUDGET			
EXPENDITURE REQUIRED: \$		1,198,705	
CURRENT BUDGET: \$		8,200,000	
ADDITIONAL FUNDING: \$		N/A	
RECOMMENDED ACTION			
Authorize the construction contract with Irwin Seating Company for full design, layout and installation for the Smart Financial Centre at Sugar Land, Package 1, Auditorium Seating, CIP MU1304, in the amount of \$1,198,705.00.			

EXECUTIVE SUMMARY

During the design process for the Smart Financial Centre at Sugar Land (SFC), there was a need to go through a value engineering (VE) process to ensure the project maintained its established budget. It was through the VE process that the project team determined if the seating, theatrical equipment, theatrical lighting, audio/visual, security, cabling, furniture, fixtures and equipment (FF&E) were purchased as an Owner Direct Purchase (ODP), savings on the project of \$1,271,000 could be achieved – helping to get even closer to the established project budget. By utilizing this method, the project team was able to save on the additional mark-up/fees from the subcontractors who would have been utilized by the Linbeck Group.

The Projects Group, led by Mr. Matt Edwards, played a vital role in working with the City and the Design Team during the design phase to suggest, assess and recommend the line items under review during the VE process. The Projects Group's vast experiences in the specialized arena of performing arts venues were key in helping the overall team achieve its objective of maintaining the budget without sacrificing the overall scope and quality. After the GMP contract was awarded to the Linbeck Group, the City Council took the next steps in approving The Projects Group's contract on December 2, 2014 to proceed with the role of Resident Project Representative (RPR) and further consult during the construction administration process, but most importantly, directly oversee the entire process of the Owner Direct Purchase items. This process entails working directly with the City's Purchasing and Engineering Departments, ACE Theatrical Group, Martinez + Johnson, the design team and Linbeck Group to publicly bid, negotiate, purchase, coordinate, install and oversee testing for all of these categories.

Irwin Seating Company is one of four seating manufacturers in the country who specialize in seating for performing arts venues. Irwin Seating worked diligently with the project team during the early design phase by providing full samples of the seating for review by all parties. Irwin Seating will be performing site visits to field verify the existing conditions, plan, layout the seating, deliver and install 6,026 fixed, padded and upholstered chairs as specified in the specifications section 126100 and TS series drawings. Irwin Seating Company and their competitors' bids were advertised on March 25th, 2015, and bids were opened on April 30th, 2015. The bids are as follows:

<u>Contractor's Name:</u>	<u>Total Bid:</u>
Irwin Seating Company	\$1,198,705.00
Series USA, LLC	\$1,200,000.00
Wenger Corporation	\$1,670,245.00
Academic Specialties Texas	\$887,990.00

Irwin Seating Company is being awarded the seating bid due to their low number amongst qualified bidders. The bid presented by Academic Specialties Texas appears to be low and resulted in additional investigation into their qualifications since their number fell \$310,715 below that of Irwin Seating Company. Academic Specialties Texas, who did not provide all the information requested through the process, was found to not be qualified to perform on a project of this nature after verifying their qualifications. Knowing this information, it was agreed upon as a whole to proceed with Irwin Seating Company as the qualified low bidder.

These ODP bids were facilitated by the City of Sugar Land Purchasing Department and coordinated by The Projects Group, with the Engineering Department providing oversight. The auditorium seating is but one component of the items being purchased through the ODP budget of \$8,200,000. The total contract amount is \$1,198,705.00

The Engineering and Purchasing Departments recommend that the City Council authorize the construction contract with Irwin Seating Company for the Smart Financial Centre at Sugar Land project (CIP 1304) in the amount of \$1,198,705.00.

EXHIBITS



Purchase Order

**City of Sugar Land
(Hereinafter "Buyer")**

DATE:

**PROJECT: Smart Financial Centre at
Sugar Land, Sugar Land, Texas**

**GOODS: Fixed Audience Seating in accordance
with the terms, conditions, specifications,
drawings and other requirements of Invitation
and Instructions to Bidders dated March 25,
2015, inclusive of Addenda**

TO:

Irwin Seating Company

JOB NUMBER: 2015-13

(Hereinafter "Seller/Bidder")

This is your authorization to furnish the materials, services, equipment, appliances for the Project, as identified on Exhibit A, at the prices set forth therein, and subject to the terms and conditions of the following contract documents ("Seller's Work"):

1. This Purchase Order;
2. Invitation and Instructions to Bidders dated March 25, 2015, all specifications and drawings therein and all Addenda issued thereto (collectively "Bid Documents");
3. Bidder's Bid, to the extent not in conflict with the provisions of the Purchase Order and Bid Documents, and as agreed by Seller.

**SELLER'S ACCEPTANCE OF THIS ORDER IS LIMITED TO ACCEPTANCE OF THE EXPRESS
TERMS AND CONDITIONS CONTAINED ON THE FACE HEREOF AND AS ATTACHED HERETO.**

PAYMENT TERMS: [As set forth in the Bid Documents or as otherwise expressly agreed] [\$1,198,705.32]

PURCHASE ORDER - TERMS AND CONDITIONS

1. **REQUIRED DELIVERY DATE: TIME IS OF THE ESSENCE IN THIS PURCHASE ORDER.**
 - 1.1 Bidder agrees to schedule and perform its work as required by the City's separate contractor,

Linbeck Group, LLC and/or its successor in the event Linbeck Group LLC is replaced (“Facility Contractor”) so as to: (i) achieve all necessary connection of Bidder’s work to the work of Linbeck Group, LLC and/or the Project; and (ii) to eliminate interference or disruption to the work of Linbeck Group, LLC and/or other contractors at the Project.

- 1.2 The overall project is being constructed by Linbeck Group, LLC under a Construction Manager At Risk Contract (“Building Contract”). The Building Contract calls for the construction of a multipurpose revenue generating venue for a variety of performance events, including but not limited to concerts, sporting events, theater and other performing arts (“Building Project”). As such, the failure to perform the work of this Bid Package as required to allow for timely completion of the Building Project will result in significant damages to ACE and the City, such as, by way of example and not limitation, cancellation fees, additional sales and marketing costs, lost revenues and lost profits, which damages are difficult to ascertain and estimate. Accordingly, the successful Bidder and the City agree, that for each calendar day beyond the date of Substantial Completion, as defined in the Building Contract, the Building Project is delayed due to successful Bidder’s failure to timely and/or adequately perform its obligations, the successful Bidder will be liable to the City in the following amounts, for the respective periods, as liquidated damages, and not as a forfeiture or penalty of any kind:

<u>Grace Period</u>	<u>Substantial Completion plus 10 calendar days</u>
\$10,000/day	for each day during the period of 11-20 calendar days after the required date of Substantial Completion
\$15,000/day	for each day during the period of 21-30 calendar days after the required date Substantial Completion
\$20,000/day	for each day during the period of 31-45 calendar days after the required date of Substantial Completion
\$25,000/day	for each day during the period after 46 days or more after the required date of Substantial Completion

2. **SHIPMENT & DELIVERY:** The amount of this Purchase Order shall include all costs incurred by Seller for shipment of all goods made the subject hereof. All goods made the subject hereof are to be suitably prepared and packaged for shipment in accordance with good commercial practice so as to effect safe delivery and free from weather damage and meet the carrier's requirements. All damages occurring prior to delivery will be charged to Seller. No charges will be allowed for packing, crating or carriage unless stated in this Purchase Order. If, in order to comply with Buyer’s delivery date it becomes necessary for Seller to ship by a more expensive way than planned, any such increased transportation costs shall be paid by Seller. All shipments shall be clearly labeled in accordance with the provisions of the Bid Documents.
3. **INSPECTION.** Buyer shall have the right to inspect and test materials at Seller’s plant anytime prior to shipment and to conduct additional inspections at any time after arrival at the job site. The making or failure to make any inspection of, payment for or acceptance of delivery of the materials, shall not impair Buyer’s right to later reject nonconforming, damaged or defective materials, or to avail itself of any other remedy to which Buyer may be entitled, notwithstanding Buyer’s knowledge of the nonconformity, damage or defect at the time of delivery. Seller shall bear the risks and expenses of all returns, including but not limited to freight, insurance, packaging and/or labor resulting from rejection or correction of the goods and equipment furnished hereunder. Seller shall be responsible for inspection of portions of work performed at the Project to determine that such portions are in proper conditions to receive Seller’s Work. If Seller finds such portions are not in proper conditions it shall notify Buyer and Facility Contractor in writing, and shall not proceed with Seller’s Work affected thereby. If Seller proceeds with such Work, it Waives and Releases any resulting claims.
4. **BUYER’S SEPARATE CONTRACTORS.** Buyer reserves the right to perform and shall perform other construction work, maintenance and repair work at, near or adjacent to the Project site during the time period of

Seller's Work. Buyer shall have access to the Project site at all times. Buyer will have other work related to the Project performed at the Project site during the time Seller performs Seller's Work. Specifically, without limitation, Buyer's Facility Contractor will be constructing the Project contemporaneously with Seller's fabrication, shipment, delivery and, as may be applicable, providing installation assistance and/or installation of Seller's Work. Seller shall be responsible for assuring proper coordination of the size, locations, capacities, installation requirements, utility or other service requirements, and all other requirements that Seller may have in connection with the installation of any of its equipment by Facility Contractor, with Facility Contractor during design and construction of the Project. Seller shall schedule Seller's Work to coordinate with the work of other contractors, including the Facility Contractor. Buyer will endeavor to have such other work performed so as not to unduly interfere with Seller's performance when Seller notifies Buyer of specific reasonable needs well in advance of those needs and where it is possible to do so. Seller should anticipate some delays and interference to its sequence of work because of work by other contractors and will not be entitled to either an extension of time or additional compensation because of such delays or interference. Seller agrees to and shall take whatever measures are necessary to stay informed of Facility Contractor's performance and most current schedule insofar as said performance and schedule effects Seller's Work. Seller shall conduct its operations in such a manner as not to cause any unnecessary delay or hindrance to Facility Contractor. Seller shall be responsible for all damages to work, to persons, or property caused by Seller, by its operations, and for loss caused due to unreasonable or unjustified delays or failure to finish Seller's Work or portions thereof, within the time requested by Buyer and/or the Facility Contractor. Should Seller cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Seller's performance of Seller's Work at the Project site be made by any separate contractor against Seller, Buyer or other consultants, or any other person, Seller shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Seller and/or its surety shall, to the fullest extent permitted by applicable laws, indemnify and hold Buyer harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professional and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor, including the Facility Contractor, against Buyer, to the extent based on a claim arising out of Seller's negligence or failure to perform in accordance with the provisions of this Purchase Order. Seller agrees that the Facility Contractor is an express third party beneficiary to the provisions of this Paragraph 4.** In the event Seller makes any claim on account of or in relation to, without limitation, any performance or failure to perform, acts, omissions, conduct, breaches, demands, statements, publications, interferences, disruptions, delays, suspensions, acceleration or termination of or by the Facility Contractor, or any other of Buyer's separate contractor's, Seller agrees that all such claims ("Seller's Claims") shall be liquidated and severed pursuant to this paragraph. Seller agrees to accept in full satisfaction and discharge of any and all such Seller's Claims, the amounts, if any, that Buyer may collect from Facility Contractor or other responsible separate contractor.

5. **TERMINATION.** Buyer reserves the right to terminate this Purchase Order, or any part hereof, at any time solely for its convenience and without cause. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause all of its suppliers to cease such work. Seller shall not be paid for any work done after receipt of notice of termination, or for any costs incurred by Seller or suppliers which Seller could have avoided. Further, Buyer may also terminate this Order, or any part hereof, for cause in the event of any default by the Seller or if the Seller fails to comply with any of the terms and conditions of this Order. Late deliveries, deliveries of products which are defective or which do not conform to the requirements of this Order, and failure to provide Buyer, upon request, reasonable assurances of future performance shall all be causes for termination of this Order. In the event of termination for cause, Buyer shall have the right to withhold all payments which have become due to Seller and all payments which may thereafter become due, to take possession of all drawings, materials and goods belonging to Seller, and for such purpose, this Order shall be construed as an assignment by the Seller to Buyer of said drawings, materials and goods. Further, in the event of such termination for cause, Seller shall be liable to Buyer for any and all damages, including, but not limited to, attorneys' fees, incurred by Buyer by reason of Seller's default and termination. Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate goods and services similar to those so canceled. In this regard, Seller understands and acknowledges that the time is of the essence and may require expediting fees and/or premiums to complete in the event of a default by Seller. Notwithstanding any other provisions of this Purchase Order, if this Purchase Order provides for the Buyer to make payments to the Seller in any fiscal year following the Buyer's fiscal year in which this Purchase Order begins and the Buyer's city council fails to appropriate funds to make the payments, then this Purchase Order automatically terminates at the beginning of the first day of the successive fiscal year for which

funds were not appropriated, and the Buyer shall not be obligated to make or have any liability to the Seller for the payments.

6. **INSURANCE.** Seller shall comply with Buyer's Insurance Requirements attached hereto as Exhibit B.

7. **WARRANTY:** Seller expressly warrants that all goods or services furnished under this Purchase Order: a) shall conform to all the requirements of the Bid Documents and appropriate standards, will be new, and will be free from defects in material and workmanship; b) will conform to any statements made on the containers or labels or advertisements for such goods or services; c) will be properly contained, packaged, marked and labeled; d) will be merchantable, and will be safe and appropriate for the purpose for which goods and services of that kind are normally used; e) will be subject to the acceptance by Buyer and will pass any inspection by Buyer and any governmental agency or authority having jurisdiction; and f) will be warranted in accordance with the requirements of this Purchase Order and the documents referred to herein.

8. **INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SELLER SHALL INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE BUYER, ACE THEATRICAL GROUP, LLC, ACE SL, LLC AND THEIR RESPECTIVE OFFICIALS, OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, FINES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, PENALTIES, AND EXPENSES, [INCLUDING ATTORNEY FEES AND COURT COSTS], OF ANY NATURE, KIND OR DESCRIPTION MADE OR ASSERTED BY ANY PERSON OR ENTITY RESULTING FROM THE WORK, EVEN THOUGH CAUSED IN PART BY THE NEGLIGENCE, (WHETHER JOINT OR CONCURRENT), OF AN INDEMNITEE. IT IS THE EXPRESS INTENTION OF SELLER TO INDEMNIFY THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR NEGLIGENCE. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.**

9. **PATENTS, COPYRIGHTS AND TRADEMARKS:** Seller agrees upon receipt of notification from Buyer to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents for alleged patent, copyright or trademark infringement, as well as any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder. **Seller further agrees to indemnify Buyer, its agents and assigns from and against any and all loss, cost, royalties, profits or damages of whatsoever nature, including, but not limited to attorneys' fees and court costs, resulting from any such suit or proceeding claiming a violation infringement of a patent, copyright or trademark, including any settlement thereof.**

10. **TITLE AND RISK OF LOSS OR DAMAGE:** Seller shall be responsible and bear the risk of loss or damage for the goods or services furnished under this Purchase Order until such time as such goods or services are installed and accepted.

11. **TAXES:** Unless otherwise specifically provided for herein, Seller shall be liable for all federal, state, or local taxes assessed by any governmental entity of any jurisdiction in connection with the goods or services furnished hereunder.

12. **BUSINESS CERTIFICATES/TAXES.** All individuals or, entities entering into a contract with Owner must adhere to the following applicable Texas laws as they pertain to their individual type of ownership:

Corporations (domestic [formed under Texas law] or foreign {formed under laws of another state}) shall be properly registered with the Texas Secretary of State and the Comptroller of Public Accounts as required by TITLE 34, Part 1, Chapter 3, Subchapter V, Rule 3.546 of the Texas Administrative Code. A current "Certificate of Good Standing" from the Texas Comptroller of Public Accounts shall be made available upon request stating that the corporation charter is current and all Texas Franchise Reports and Taxes are paid.

Partnerships and Joint Stock Companies, and Limited Liability Partnerships (domestic [formed under Texas law] or foreign {formed under laws of another state}) shall be, properly registered with the Texas Secretary of State in accordance with TITLE 105 --- PARTNERSHIPS AND JOINT STOCK COMPANIES, CHAPTER ONE --- PARTNERSHIPS, LIMITED PARTNERSHIPS, TEXAS REVISED LIMITED PARTNERSHIP ACT, Article 6132a-1, "Texas Revised Limited Partnership Act." All partners in a partnership must file a "Certificate of Limited Partnership" with the secretary of state, which shall be made available for inspection upon request.

Seller whether Corporate, Partnership, or Sole Owner must be current on Property Taxes. If commercial personal property is located in the jurisdiction, current renditions of these properties must be filed with the Chief Appraiser, as required by Chapter 22, Section 22.01, of the Texas "PROPERTY TAX CODE", and Seller must be current on all taxes owing to Buyer.

13. DEBARMENT AND SUSPENSIONS. Seller certifies, to the best of its knowledge and belief, that it is not presently debarred, suspended for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. Seller agrees to comply with all applicable requirements of all federal laws, executive orders, regulations, applicable guidelines, and policies governing this program, particularly relating to nondiscrimination. These include but are not limited to: (i) Title VI of the Civil Rights Act of 1964, as amended; (ii) Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and (iii) the American with Disabilities Act, as amended.

14. INDEPENDENT CONTRACTOR. In all activities or services performed hereunder, the Seller is an independent contractor and not an agent or employee of Buyer. Seller and its employees are not the agents, servants, or employees of Buyer. As an independent contractor, Seller shall be responsible for the Seller's Work contemplated under this Purchase Order. Except for materials furnished by Buyer, Seller shall supply all materials, equipment, and labor required for the Seller's Work to be provided under this Purchase Order. Seller shall have ultimate control over the execution of the Seller's Work. Seller shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subconsultants, and Buyer shall have no control of or supervision over the employees of Seller or any of Seller's subconsultants.

Accepted:

City of Sugar Land

Seller/Bidder

Irwin Seating Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A



Package #1 - Fixed Seating

Contractor: Irwin Seating Company

BID SUMMARY / EVALUATION CRITERIA

Responsive to all Criteria: Yes

Comments: 1.1a Fixed Audience Seating - Spec Section 126100

INTRODUCTION AND BACKGROUND

Irwin Seating has worked with The City of Sugar Land and M+J early in the design phase. Irwin Seating has provided a seating sample.

SCOPE

Deliver and install 6,026 fixed, padded and upholstered chairs as specified in spec section 126100 and TS series drawings.

PROJECT TEAM & STAFF

1. Colin W. "Coke" Irwin - Project Executive, 6 years public seating management experience
2. Don A. Nestor - Project Manager, 9 years public seating project management experience, responsible for project execution

PROJECT EXPERIENCE

- Repres 1. Saenger Theatre - New Orleans, Louisiana (Contract Amount: \$971,000)
- Projects: 2. Lambeau Field - Greenbay, WI (General Seating, Club Seating, Suite Seating)
3. Kings Theatre - Brooklyn, New York (Contract Amount: \$991,000)

Fixed Seating Fee Summary

Fixed Audience Seating **\$ 1,198,705.32**

Exhibit B

Insurance Requirements: The Seller, at its sole cost and expense, shall at all times during the period of the project provide and maintain the following insurance protecting the interest of the Seller and Buyer and shall provide a certificate of coverage showing same prior to beginning work on the project.

1. **Workers' Compensation Insurance:** Seller shall provide Worker's Compensation Insurance with employers' liability coverage to limits of not less than \$1,000,000, covering in separate policy issued to each, the respective operations of Seller and each Subcontract performed in connection with Work at or from the property. Seller's Workers' Compensation coverage shall be endorsed with Form "TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT" (or successor form) found in Texas Workers' Compensation and Employers' Liability Manual, waiving subrogation against Buyer.
2. **Commercial General Liability:** Occurrence Form (including Broad Form Property Damage and Contractual Liability) Commercial General Liability Policies shall be endorsed to waive subrogation against Buyer. The commercial general liability aggregate coverage shall be endorsed to be a per-project aggregate.

AMOUNT: General Aggregate - \$2,000,000, per project; Products-Completed Operations Aggregate - \$1,000,000; Personal & Advertising Injury - \$1,000,000; Each Occurrence - \$1,000,000; Damage to Rented Premises - \$50,000; Medical Expense - \$5,000
3. **Commercial Automobile Liability:** Seller shall have commercial automobile liability insurance including all owned, hired and non-owned vehicles: Combined Single Limit - \$1,000,000. The policy shall be endorsed to waive subrogation against Buyer.
5. **Waiver of Subrogation:** Seller shall obtain all policies of insurance that are in any way related to the Work and that are required to be and maintained by Seller and its subcontractors, to include clauses providing that each underwriter shall waive all of its rights of subrogation against Buyer.
6. **Certificate Holder:** The certificate holder shall be listed as:

City of Sugar Land
2700 Town Center Blvd. North
Sugar Land, Texas 77479

7. **30-Day Notice of Cancellation:** All policies of insurance that Seller is required under the terms hereof to secure and maintain shall be endorsed to provide that the insurance company shall notify Buyer at least thirty (30) days prior to the effective date of any cancellation or modification of such policies. Prior to the date on which Seller or any subcontractor commences performance of its part of the Work, Seller shall cause to be furnished to Buyer certificates of insurance evidencing the insurance coverage required to be maintained by Seller and each such subcontractor in connection with the performance of the Work.
8. **Additional Insured:** All policies of insurance, excepting workers' compensation insurance, shall name Buyer, ACE Theatrical Group, LLC and ACE SL, LLC, as additional insureds.
9. **Primary Insurance:** Seller's insurance shall be primary and any insurance maintained by Buyer shall be excess and non-contributory.
10. **Deductible:** Seller shall be responsible for any deductible stated in the Seller's policies required under this section.
11. **Limit of Indemnification:** In any and all claims against Buyer or any of its agents or employees by any employee or subcontractor or anyone for whose acts Seller may become liable, the indemnification obligations hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensations, or benefits payable by or for Seller under worker's compensation acts, disability acts, or other employee benefit acts.

12. License of Insurance Company and Agent: The insurance company shall be licensed to provide insurance in the State of Texas. The insurance agent shall provide his or her License Number or Social Security Number to allow Buyer to check with regulatory agencies to verify company and agent's licenses.
13. Rating of Insurance Company: The company shall have a rating of "A" or higher with the current Best's Key Rating Guide ("Best's"). The name of the company on the insurance certificate must be the same as the company name on file with Best's. An insurance company may be listed as a policy provider on the certificate and not have at least a "A" with Best's provided that the company is reinsured by other insurance companies that have a rating of "A" or better with Best's and proof of this reinsurance is provided to the Buyer.



Purchase Order

City of Sugar Land
(Hereinafter "Buyer")

DATE:

PROJECT: Smart Financial Centre at
Sugar Land, Sugar Land, Texas

GOODS: Fixed Audience Seating in accordance
with the terms, conditions, specifications,
drawings and other requirements of Invitation
and Instructions to Bidders dated March 25,
2015, inclusive of Addenda

TO:
Irwin Seating Company

JOB NUMBER: 2015-13

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2. **SHIPMENT & DELIVERY:** The amount of this Purchase Order shall include all costs incurred by Seller for shipment of all goods made the subject hereof. All goods made the subject hereof are to be suitably prepared and packaged for shipment in accordance with good commercial practice so as to effect safe delivery and free from weather damage and meet the carrier's requirements. All damages occurring prior to delivery will be charged to Seller. No charges will be allowed for packing, crating or carriage unless stated in this Purchase Order. If, in order to comply with Buyer's delivery date it becomes necessary for Seller to ship by a more expensive way than planned, any such increased transportation costs shall be paid by Seller. All shipments shall be clearly labeled in accordance with the provisions of the Bid Documents.

3. **INSPECTION.** Buyer shall have the right to inspect and test materials at Seller's plant anytime prior to shipment and to conduct additional inspections at any time after arrival at the job site. The making or failure to make any inspection of, payment for or acceptance of delivery of the materials, shall not impair Buyer's right to later reject nonconforming, damaged or defective materials, or to avail itself of any other remedy to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, damage or defect at the time of delivery. Seller shall bear the risks and expenses of all returns, including but not limited to freight, insurance, packaging and/or labor resulting from rejection or correction of the goods and equipment furnished hereunder. Seller shall be responsible for inspection of portions of work performed at the Project to determine that such portions are in proper conditions to receive Seller's Work. If Seller finds such portions are not in proper conditions it shall notify Buyer and Facility Contractor in writing, and shall not proceed with Seller's Work affected thereby. If Seller proceeds with such Work, it Waives and Releases any resulting claims.

4. **BUYER'S SEPARATE CONTRACTORS.** Buyer reserves the right to perform and shall perform other construction work, maintenance and repair work at, near or adjacent to the Project site during the time period of

Seller's Work. Buyer shall have access to the Project site at all times. Buyer will have other work related to the Project performed at the Project site during the time Seller performs Seller's Work. Specifically, without limitation, Buyer's Facility Contractor will be constructing the Project contemporaneously with Seller's fabrication, shipment, delivery and, as may be applicable, providing installation assistance and/or installation of Seller's Work. Seller shall be responsible for assuring proper coordination of the size, locations, capacities, installation requirements, utility or other service requirements, and all other requirements that Seller may have in connection with the installation of any of its equipment by Facility Contractor, with Facility Contractor during design and construction of the Project. Seller shall schedule Seller's Work to coordinate with the work of other contractors, including the Facility Contractor. Buyer will endeavor to have such other work performed so as not to unduly interfere with Seller's performance when Seller notifies Buyer of specific reasonable needs well in advance of those needs and where it is possible to do so. Seller should anticipate some delays and interference to its sequence of work because of work by other contractors and will not be entitled to either an extension of time or additional compensation because of such delays or interference. Seller agrees to and shall take whatever measures are necessary to stay informed of Facility Contractor's performance and most current schedule insofar as said performance and schedule effects Seller's Work. Seller shall conduct its operations in such a manner as not to cause any unnecessary delay or hindrance to Facility Contractor. Seller shall be responsible for all damages to work, to persons, or property caused by Seller, by its operations, and for loss caused due to unreasonable or unjustified delays or failure to finish Seller's Work or portions thereof, within the time requested by Buyer and/or the Facility Contractor. Should Seller cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Seller's performance of Seller's Work at the Project site be made by any separate contractor against Seller, Buyer or other consultants, or any other person, Seller shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Seller and/or its surety shall, to the fullest extent permitted by applicable laws, indemnify and hold Buyer harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professional and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor, including the Facility Contractor, against Buyer, to the extent based on a claim arising out of Seller's negligence or failure to perform in accordance with the provisions of this Purchase Order. Seller agrees that the Facility Contractor is an express third party beneficiary to the provisions of this Paragraph 4.** In the event Seller makes any claim on account of or in relation to, without limitation, any performance or failure to perform, acts, omissions, conduct, breaches, demands, statements, publications, interferences, disruptions, delays, suspensions, acceleration or termination of or by the Facility Contractor, or any other of Buyer's separate contractor's, Seller agrees that all such claims ("Seller's Claims") shall be liquidated and severed pursuant to this paragraph. Seller agrees to accept in full satisfaction and discharge of any and all such Seller's Claims, the amounts, if any, that Buyer may collect from Facility Contractor or other responsible separate contractor.

5. **TERMINATION.** Buyer reserves the right to terminate this Purchase Order, or any part hereof, at any time solely for its convenience and without cause. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause all of its suppliers to cease such work. ~~Seller shall not be paid for any work done after receipt of notice of termination, or for any costs incurred by Seller or suppliers which Seller could have avoided.~~ Further, Buyer may also terminate this Order, or any part hereof, for cause in the event of any default by the Seller or if the Seller fails to comply with any of the terms and conditions of this Order. Late deliveries, deliveries of products which are defective or which do not conform to the requirements of this Order, and failure to provide Buyer, upon request, reasonable assurances of future performance shall all be causes for termination of this Order. In the event of termination for cause, Buyer shall have the right to withhold all payments which have become due to Seller and all payments which may thereafter become due, to take possession of all drawings, materials and goods belonging to Seller, and for such purpose, this Order shall be construed as an assignment by the Seller to Buyer of said drawings, materials and goods. Further, in the event of such termination for cause, Seller shall be liable to Buyer for any and all damages, including, but not limited to, attorneys' fees, incurred by Buyer by reason of Seller's default and termination. Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate goods and services similar to those so canceled. In this regard, Seller understands and acknowledges that the time is of the essence and may require expediting fees and/or premiums to complete in the event of a default by Seller. Notwithstanding any other provisions of this Purchase Order, if this Purchase Order provides for the Buyer to make payments to the Seller in any fiscal year following the Buyer's fiscal year in which this Purchase Order begins and the Buyer's city council fails to appropriate funds to make the payments, then this Purchase Order automatically terminates at the beginning of the first day of the successive fiscal year for which

funds were not appropriated, and the Buyer shall not be obligated to make or have any liability to the Seller for the payments.

6. **INSURANCE.** Seller shall comply with Buyer's Insurance Requirements attached hereto as Exhibit B.

7. **WARRANTY:** Seller expressly warrants that all goods or services furnished under this Purchase Order: a) shall conform to all the requirements of the Bid Documents and appropriate standards, will be new, and will be free from defects in material and workmanship; b) will conform to any statements made on the containers or labels or advertisements for such goods or services; c) will be properly contained, packaged, marked and labeled; d) will be merchantable, and will be safe and appropriate for the purpose for which goods and services of that kind are normally used; e) will be subject to the acceptance by Buyer and will pass any inspection by Buyer and any governmental agency or authority having jurisdiction; and f) will be warranted in accordance with the requirements of this Purchase Order and the documents referred to herein.

8. **INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SELLER SHALL INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE BUYER, ACE THEATRICAL GROUP, LLC, ACE SL, LLC AND THEIR RESPECTIVE OFFICIALS, OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, FINES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, PENALTIES, AND EXPENSES, [INCLUDING ATTORNEY FEES AND COURT COSTS], OF ANY NATURE, KIND OR DESCRIPTION MADE OR ASSERTED BY ANY PERSON OR ENTITY RESULTING FROM THE WORK, EVEN THOUGH CAUSED IN PART BY THE NEGLIGENCE, (WHETHER JOINT OR CONCURRENT), OF AN INDEMNITEE. IT IS THE EXPRESS INTENTION OF SELLER TO INDEMNIFY THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR NEGLIGENCE. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.**

9. **PATENTS, COPYRIGHTS AND TRADEMARKS:** Seller agrees upon receipt of notification from Buyer to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents for alleged patent, copyright or trademark infringement, as well as any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder. **Seller further agrees to indemnify Buyer, its agents and assigns from and against any and all loss, cost, royalties, profits or damages of whatsoever nature, including, but not limited to attorneys' fees and court costs, resulting from any such suit or proceeding claiming a violation infringement of a patent, copyright or trademark, including any settlement thereof.**

10. **TITLE AND RISK OF LOSS OR DAMAGE:** Seller shall be responsible and bear the risk of loss or damage for the goods or services furnished under this Purchase Order until such time as such goods or services are installed and accepted.

11. **TAXES:** Unless otherwise specifically provided for herein, Seller shall be liable for all federal, state, or local taxes assessed by any governmental entity of any jurisdiction in connection with the goods or services furnished hereunder.

12. **BUSINESS CERTIFICATES/TAXES.** All individuals or, entities entering into a contract with Owner must adhere to the following applicable Texas laws as they pertain to their individual type of ownership:

Corporations (domestic [formed under Texas law] or foreign {formed under laws of another state}) shall be properly registered with the Texas Secretary of State and the Comptroller of Public Accounts as required by TITLE 34, Part 1, Chapter 3, Subchapter V, Rule 3.546 of the Texas Administrative Code. A current "Certificate of Good Standing" from the Texas Comptroller of Public Accounts shall be made available upon request stating that the corporation charter is current and all Texas Franchise Reports and Taxes are paid.

Partnerships and Joint Stock Companies, and Limited Liability Partnerships (domestic [formed under Texas law] or foreign {formed under laws of another state}) shall be, properly registered with the Texas Secretary of State in accordance with TITLE 105 --- PARTNERSHIPS AND JOINT STOCK COMPANIES, CHAPTER ONE --- PARTNERSHIPS, LIMITED PARTNERSHIPS, TEXAS REVISED LIMITED PARTNERSHIP ACT, Article 6132a-1, "Texas Revised Limited Partnership Act." All partners in a partnership must file a "Certificate of Limited Partnership" with the secretary of state, which shall be made available for inspection upon request.

Seller whether Corporate, Partnership, or Sole Owner must be current on Property Taxes. If commercial personal property is located in the jurisdiction, current renditions of these properties must be filed with the Chief Appraiser, as required by Chapter 22, Section 22.01, of the Texas "PROPERTY TAX CODE", and Seller must be current on all taxes owing to Buyer.

13. DEBARMENT AND SUSPENSIONS. Seller certifies, to the best of its knowledge and belief, that it is not presently debarred, suspended for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. Seller agrees to comply with all applicable requirements of all federal laws, executive orders, regulations, applicable guidelines, and policies governing this program, particularly relating to nondiscrimination. These include but are not limited to: (i) Title VI of the Civil Rights Act of 1964, as amended; (ii) Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and (iii) the American with Disabilities Act, as amended.

14. INDEPENDENT CONTRACTOR. In all activities or services performed hereunder, the Seller is an independent contractor and not an agent or employee of Buyer. Seller and its employees are not the agents, servants, or employees of Buyer. As an independent contractor, Seller shall be responsible for the Seller's Work contemplated under this Purchase Order. Except for materials furnished by Buyer, Seller shall supply all materials, equipment, and labor required for the Seller's Work to be provided under this Purchase Order. Seller shall have ultimate control over the execution of the Seller's Work. Seller shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subconsultants, and Buyer shall have no control of or supervision over the employees of Seller or any of Seller's subconsultants.

Accepted:

City of Sugar Land

By: _____

Name: _____

Title: _____

Seller/Bidder

Irwin Seating Company

By: Colin W. Irwin

Name: Colin W. Irwin

Title: Director of Sales